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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,387	08/09/2005	Robin John Batterham	4623-045790	4715
28289 7590 05/04/2009 THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219			EXAMINER ZHU, WEIPING	
			ART UNIT 1793	PAPER NUMBER
			MAIL DATE 05/04/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/516,387

**Applicant(s)**

BATTERHAM ET AL.

**Examiner**

WEIPING ZHU

**Art Unit**

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 3/9/2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 10-14 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-14 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 9, 2009 has been entered.

### ***Status of Claims***

2. Claims 1-7, 10-14 and 21 are currently under examination wherein claims 1-3, 5, 10-14 and 21 have been amended in applicant's amendment filed on March 9, 2009.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-7, 10-14 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "containing metal value in solution" in the parentheses in claims 1 and 21 renders claims 1 and 21 and all their dependent claims indefinite because it is unclear whether or not the limitations in the phrase are required in the claimed method.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7, 10-14 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 4,960,584).

With respect to claims 1, 2, 3, 10, 11 and 21, Brown ('584) discloses a method of leaching a metal value from a heap of crushed metal-laden ore comprising (abstract, Figures 1-3 and col. 4, lines 52 to col. 5, line 13):

establishing a downward flow of a leaching solution (i.e. the leach liquor as claimed) through a section of the heap by supplying the leaching solution onto a top surface of the section of a heap length to establish a plug flow of the leaching solution through the section of the heap at a flow rate that is sufficient to maintain the plug flow of the leaching solution so that the downwardly flowing leaching solution constantly saturates the section of the heap; leaching solution being distributed in a generally umbrella-shaped pattern (i.e. a flowing curtain as a line or a narrow band as claimed) tightly spaced with a spacing as low as 1.0 ft, which reads on the claim limitation that the line or narrow band is less than 1 m wide, with the adjacent patterns overlapping (i.e. extending across the top surface as claimed) (col. 3, lines 51-54), the curtain being moved along the length of the section of the heap in a series of steps; and allowing the leaching solution containing metal values to drain from a lower part of the section.

Brown ('584) does not specify the leach liquor supplying time periods as claimed in the instant claims 1, 10, 11 and 21. However, Brown ('584) discloses that the contact time ranges from four hours to sixty days (col. 4, line 65 to col. 5, line 13), which reads on the claimed leach liquor supplying time periods of less than 2, 3 and 4 hours per 24 hour period.

With respect to claim 4, Brown ('584) discloses that the curtain is continuous across the top surface of the heap (col. 4, lines 52-64 and Figures 1-3).

With respect to claims 5-7, Brown ('584) discloses that the flow rate is in the range of 0.05 to 1.5 gph/ft<sup>2</sup> (i.e. 2 to 61 l/hr/m<sup>2</sup>), which overlaps the claimed range. Therefore, a prima facie case of obviousness exists. See MPEP 2144.05 I. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the claimed range within the disclosed range of Brown ('584) with expected success, because Brown ('584) discloses the same utility over the entire disclosed range.

With respect to claim 12, Brown ('584) discloses that the leaching solution is supplied via a distributor that can be moved over the surface of the heap (col. 4, lines 52-64 and Figures 1-3).

With respect to claims 13 and 14, Brown ('584) discloses that the metal-laden ore is deposited on an impervious pad in the form of one or more plastic sheets 13 (i.e. the barrier as claimed) (col. 2, lines 49-55 and Figure 1), which prevents any run-off of the leaching solution and obviously reads on the claimed features.

***Response to Arguments***

5. The applicant's arguments filed on March 9, 2009 have been fully considered but they are not persuasive.

The applicant argues that Brown ('584) fails to teach, discuss or suggest the features of the invention now recited in independent claims 1 and 21. In response, see the new grounds of rejection of the amended claims above.

***Conclusions***

6. This Office action is non-final. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Weiping Zhu whose telephone number is 571-272-6725. The examiner can normally be reached on 8:30-16:30 Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George Wyszomierski/  
Primary Examiner  
Art Unit 1793

WZ  
4/25/2009